

PLANNING BOARD MEETING

TIPP CITY, MIAMI COUNTY, OHIO

FEBRUARY 15, 2007

Meeting

Chairman Michael McFarland called this meeting of the Tipp City Planning Board to order at 7:30 p.m. This meeting had been scheduled for February 13, 2007 but due to severe weather it was rescheduled to this date.

Roll Call

Roll call showed the following Board members present: Mike McFarland, John Berbach, and Bryan Blake.

Others in attendance: Assistant City Manager Brad Vath and Board Secretary Marilyn Fennell. Those signing the guest register included: Ron Potter, Brad Warkentine, Joe Bagi, Paul Courtney, and Sue Amlin.

Excuse Absent Board Members

Mr. McFarland **moved to excuse Mr. Springer and Mr. Horrocks from the meeting.** Mr. Blake seconded the motion. Motion carried 3-0. Mr. McFarland announced that the Board would be able to conduct business as there was a quorum present and that (a) majority vote would be two.

Approval of Minutes January 9, 2007 Workshop Meeting

Mr. Berbach **moved to approve the minutes of the January 9, 2007 workshop meeting as presented.** Mr. McFarland seconded the motion. Motion carried 2-0-1. Ayes: McFarland and Berbach. Abstained: Mr. Blake

January 9, 2007 Meeting

Mr. McFarland **moved to approve the minutes of the January 9, 2007 meeting as presented.** Mr. Berbach seconded the motion. Motion carried 2-0-1. Ayes: McFarland and Berbach Abstained: Mr. Blake.

Items not on the Agenda

There were no comments on items not on the agenda.

NEW BUSINESS Deadline Dates

Chairman McFarland announced that the next regularly scheduled Planning Board meeting would be held Tuesday, March 13, 2007. Preliminary Plans, Final Plats and Site Plans must be submitted by 5:00 p.m. on February 20, 2007 and temporary sign requests for display over 30 days must be submitted by 5:00 p.m. on March 7, 2007.

Swearing-in

Mr. Vath swore in those parties wishing to testify during the scheduled public hearing.

Public Hearing: Gerald & Goldie Thompson, 425 Kerr Road, Inlot 2349- Pre- Application Final Plat for Major Subdivision

Mr. Vath said at the last Planning Board meeting the Board moved forward a Preliminary Plat and Concept Sketch for this major subdivision for Mr. and Mrs. Thompson at 425 W. Kerr Road, Inlot 2349. Tonight the applicants are seeking recommendation of approval of the Final Plat to City Council in accordance with Code. This pertains to the subdivision of the parcel at 425 Kerr Road, a \pm 4.5 acre parcel to be divided into two equal lots of record each being 2.241 acres in area. The property is zoned R-1, Residential Open Space area and there are no proposed change in that zoning. The parcel would incorporate a 10' utility easement on the north, south, and east property lines and a 20' utility easement along the west property line. There is also a 50' Ohio

Fuel easement that bisects the northern portion of the property from east to west. As noted in the Preliminary Plat stage the Tipp City Thoroughfare Plan requires the dedication of right of way of 60' in total for Kerr Road. That is in reference to Ordinance 40-06. Code §155.107(D) requires that in cases in which the proposed thoroughfare, as shown on the Official Thoroughfare Plan abuts or crosses the proposed subdivision, the subdivider shall be responsible for all required for all required improvements, including the required pavement width on an undivided street.

Mr. Vath noted that per §155.107(D) the Planning Board has the prerogative to waive certain required public improvements as was done at the last meeting at the Preliminary Plat stage. However, regarding these modifications, Code §155.132(D) states that the Planning Board may grant a modification to these regulations as specified herein, where unusual or exceptional factors or conditions require such modification, provided that the Planning Board shall find: "that any modification granted will not be detrimental to the public interest nor in conflict with the intent and purpose of these regulations." Staff noted that there are possibly \$85,000 worth (City's best guess, no cost estimates provided by applicant) of "unassessable" costs that would be waived if the Plat moves forward without the requirement of bonding, surety and installing public improvements.

Mr. Vath read the summary statements in the staff report:

- 1) Approval of a major subdivision with right-of-way dedication, yet without requiring the official thoroughfare construction requirements (construction of roadway and utilities) is unprecedented in Tipp City, thus creating a precedent for all future developers.
- 2) Approval of a subdivision requiring public improvements as mandated in the Tipp City Thoroughfare Plan, yet waiving the costs to the subdivider of such improvements may be detrimental to the public interest and therefore in conflict with Code §155.132(D). The \$85,000 potentially becomes a liability for the future tax payers of Tipp City.
- 3) With Planning Board's approval of the Preliminary Plat and not requiring public improvements, the following items have not been completed nor supplied for this major subdivision: surety, construction/subdivision agreement, construction drawings, engineering calculations, etc.
- 4) If it is the intention of Planning Board to waive all required public improvements as required in Code §155.107(D) and the Tipp City Thoroughfare Plan, it is important to note the same in any such motion made to recommend the Final Plat to City Council.

Mr. Vath added that the motion made at the last meeting was a little ambiguous; it waived all "unassessable public improvements." Staff assumed it was the intention of Planning Board to waive all public improvements for this major subdivision.

Mr. McFarland asked for further comments on the matter. Mr. Paul Courtney, representing the applicants, Thompsons, said he got the sense the motion was to waive all public improvements. He said the member who made the motion was asked to clarify that it was all unassessable improvements that were to be waived. He said the

Thompsons are not developers, they have not applied for any improvements, and they are simply drawing a line down the middle of the property. They agreed that the Thoroughfare Plan "bootstraps" them into the requirement to widen the road but the Planning Board weighed the notion that if developers have been required to put in non-assessable improvements then all the improvements put in by developers have been put in at their expense. He then asked if all non-assessable improvements, the infrastructure that exists, has it been put in by developers. Mr. Courtney said there are great sections of the city where the city installed streets, the improvements under the street where there have been no assessments. Only when developers have come in and proposed major subdivisions, have the non-assessable improvements been paid for by private property owners. Mr. Courtney said the Board also weighed against the notion of the Thoroughfare Plan having the road widened in our lifetime. Mr. Courtney said they were setting a precedent in that if someone brings in what appears to be a "minor subdivision" except for the Thoroughfare Plan bootstrapping it in, perhaps it would be unfair to have the Thompson's to pay up-front engineering costs, to assess how much it would cost to widen the road, install public improvements and he didn't think the engineering costs would be restricted to the non-assessable. It would include the engineering for widening the road, then the bond premium for an indefinite period of time because the City has no clue when or if ever, Kerr Road will be widened to 60'. It could set as it is for our lifetime and the Thompsons could be paying for a bond premium every year until the road is widened. He thought the Board weighed these factors and said they were willing to look at this and say if they were to set a precedent that it be if one lot divided into two with no improvements in the application, can be treated by waiving the public improvements and waiving the engineering, the drawings, and the other submittals not made at this time. Mr. Courtney asked the Board to approve the request as submitted so that they can proceed to City Council.

Mr. McFarland asked for comments. Mr. Vath said he had 3 points. 1) There is a difference of opinion between the Thompsons and staff, as the Thompsons are developers because they are splitting a property and dividing it into two lots. It is a major subdivision.

2) The comment about "bootstrapping" the property with the Thoroughfare Plan, it is clear in Code §155.107(D), that these requirements are in place including the Thoroughfare Plan, and it requires additional dedication of right-of-way, that the improvements must be made unless they are waived by the Planning Board which is the action taken at the earlier meeting. So he believed it was following code to make such requirements.

3) To note for the record, on the precedent issue, the City has two outstanding requests that will be before the Planning Board very similar to tonight's request. Both of these requests are on Evanston Road for property owners who own property where the right-of-way has not been dedicated to the full width and they want to split their property or add additional property to it. Mr. Vath said this has never come before the Board in the six years that he has been with the City but we may have three within a very short time period. The action that the Planning Board takes on this issue is going to set precedent and will have ramifications for future applications.

Mr. Blake asked what the plans for the Thompson property

were. Mr. Courtney said they wish to build a residential home on each lot. If this request is turned down, then a single home could be built on the lot. Mr. Blake asked if they were going to sell the homes or live in them. Mr. Courtney said his understanding was that the Thompsons would live in one and the other house was for a family member. Mr. Blake said he had reservations on setting a precedent, going against the code requirements. He realized it was a great sum of money for someone to put forth for a thoroughfare that may not be completed for some time.

Mr. Vath swore in another citizen wishing to testify. Mr. Ronald Potter, executor for the Charles Potter, 390 Kerr Road property, said it was the first he had heard about the plans for the property across the road. He asked if the City did require the road to be widened, what the possibility was for other residents along Kerr Road being assessed for such work. Mr. Vath said his property was out of the City limits, the center line of Kerr Road is basically our corporate limits. If City Council is going to do anything with the road it would just be on the north side of the road.

Mr. Berbach said the lot is being divided in half and sometime down the road there are going to be homes built. What is in front of the Board is, by definition of the Code §155.011, a major subdivision. Mr. Vath said that was correct. Mr. Courtney said he made his argument that it is a "minor" but he did not wish to argue that anymore. Mr. Courtney said his clients were willing to dedicate the right-of-way so that when Kerr Road is widened someday, the City would not have to pay for the right-of-way as they would if it were still only a single lot. Mr. Vath said if the improvements were installed as code requires, then the City would not be paying for the improvements. Mr. Blake said if the property owner does not do the improvements now, the road widening happens, the City has acquired the right-of-way but the City would have to pay for the improvements. Mr. Courtney said they could assess the lion's share of the improvements, the street, curbs, etc. The non-assessables, the water, storm, and sanitary would not be assessed. Mr. Vath said technically there could be intervening user fee agreements to recoup water/sanitary sewer fees. Traditionally Tipp City has not assessed for street improvements which would be widening, base, storm sewer, generally assessments have been for curb/gutter/sidewalk and aprons. Mr. Vath continued that when new lots are platted, anywhere else in Tipp City a subdivider pays for the improvements. He said this was unusual as it is only two lots, on 5 acres but if it was a subdivision somewhere else and you had 5 acres, it could have up to 10 lots. This is not possible due to the lack of sanitary sewer lines and the inability of a septic system allowed for that many units.

Mr. Courtney said certain improvements would be paid for by assessments and by other things that the City does. It has always been his point that if his clients were going to build a cul-de-sac and split it into 6 lots then they would have to pay just as any other subdivider. They are proposing to build two homes and leave Kerr Road alone. He said the Thoroughfare Plan is dictating the improvements. Mr. Vath said he agreed that the Plan requires the additional widening which is a long range planning tool for the City which when development occurs, the infrastructure goes in. Tipp City's Plan ties into and corresponds to Miami County's Thoroughfare Plan and as mentioned in previous

meetings, this was originally a 70' right-of-way but was recently reduced to a 60' right-of-way.

Mr. Berbach asked what the \$85,000 estimate comprised. Mr. Courtney said it was a "very rough" estimate from staff, Code expects the applicant to come in with drawings, etc. Mr. Vath said it covers the street improvements, clearing and grubbing, excavation, under drains, storm sewer line, manholes, asphalt, gravel base, sod/seed, traffic maintenance, centerline striping, and then engineering costs. Mr. Vath said this was staff's best guess as the information was not provided by the applicant (Code §155.020 to §155.050). Mr. Berbach said it certainly seemed impractical for two homes but he understood what was before the Board for the future.

Mr. McFarland asked for further questions or comments. There were none. He asked for a motion to close the public hearing. Mr. Blake **moved to close the public hearing.** Mr. Berbach seconded the motion, motion carried unanimously.

Mr. Berbach said it was a good idea to split the lot but he had major concerns about creating a precedent. He asked Mr. Vath if it could be approved contingent on some condition. Mr. McFarland said they could deny it and the applicant could appeal to City Council. Mr. Vath said that was correct, there is due process. Mr. Blake asked if it had to go to Council. Mr. Vath said it could go to Council with a negative recommendation. He said generally we have not had subdivisions go forward without a positive recommendation to Council. Mr. McFarland asked if Planning Board did deny the request the applicant had the option to go forward. Mr. Berbach said the Planning Board could approve it, waiving the improvements. Mr. McFarland said if that is done then there is a precedent set for anyone else coming in. He said the Code was basically tying the Board's hands unless there was a different definition of a "major" subdivision. He said he was not comfortable forwarding something to Council with waivers and such. Mr. Blake said he was unclear as to what the motion was at the last meeting. He said the non-assessable improvements were waived. Mrs. Fennell said it also included that the right of way dedication was required. Mr. Blake asked if the property owner could still be assessed for the curb/gutter and sidewalk. Mr. Vath said that was the normal process for any lot within the corporate limits.

Mr. Blake said he had a question on the staff summary. He asked about the conflict with Code §155.132(D) in Point #2. Mr. Vath said the second page referred back to the "Modifications". That code section is indicating that actions by the Planning Board should not be detrimental to the public at large. That is a decision each Board member must make whether it is in the appropriate public interest. Mr. Vath referred also to Code §155.047 regarding the disapproval of the Final Plat, "written notice of such action including reference to the regulations violated by the Plat or the reasons for the disapproval, shall be mailed to the subdivider or developer, the action shall be entered in the official record of the Planning Board."

Mr. Berbach asked if this request was granted, and the \$85,000 was not included, and 5 years from now the road is to be widened, does that not go into the property owners' taxes. Mr. Vath said normally the

City has only assessed for curb/gutter, sidewalk, and aprons. The \$85,000 is the cost beyond that which is the street improvement costs. There is an ability through the Ohio Revised Code to assess for street improvements and there is a process for that. Mr. Vath said it has not been done that way in Tipp City to his knowledge. The actual cost of asphalt, storm sewer, and base etc. have not been charged to property owners, such as with the recently completed N. Hyatt St. project. The property owners there are only being assessed for curb, gutter, sidewalk, and aprons.

Mr. Blake asked if the lot has to be split to have two homes to be built. Mr. Vath said one cannot have two single principle houses on a single lot. The applicant could put a single-family house on the lot and the Thoroughfare Plan does not apply then to this lot. Mr. McFarland said as soon as the lot is divided into two or more, it is a major subdivision.

Mr. Berbach asked how the Board could send a positive recommendation contrary to Code to City Council. Mr. Blake said each individual occurrence would go back to this issue. Mr. Courtney said he knew the Public Hearing was closed but he wished to say the Board would not be going against Code as the Code allows them to waive these improvements. Mr. Blake said that was only if it was not detrimental to the City.

Mr. McFarland said there is a Thoroughfare Plan that was approved by the Planning Board and City Council; it is a "bible that is used". He did not see anything in the request that will override that Plan. Based on the other codes that apply in this case, aside from having a code revision that redefines what a "major" subdivision is or something like that, he would not have a problem denying the request. He did not wish to set a precedent and he anticipated that Council may take a look at it and ask the Planning Board to look at a revision to code.

Mr. McFarland **moved to deny the request based on the above statements (City Code § 155.107(D), 155.132(D), and 155.010)**. Mr. Blake seconded the motion. Motion carried 2-1. Ayes: McFarland and Blake, Nays: Berbach. The request was denied. Mr. Vath verified that the secretary had the reasons for denial. She said she had them. Mr. Vath said a letter will go out to the applicants, signed by Mr. McFarland. Mr. McFarland asked that the appeal process be included. Mr. Vath said there is due process and he would verify that with the Law Director.

Set Public Hearing:
Berry-Logan
Properties- Zoning
Map Amendment

The next items of business were to set Public Hearings for 3 requests. Mr. McFarland **moved to set the public hearing for March 13, 2007 for Berry-Logan Properties, LLC, Pt IL 3737, ± 11.274 acres, NW corner of Donn Davis Way & E. Kessler-Cowlesville Rd- Zoning Map Amendment from I-1 to HS**. Mr. Berbach seconded the motion and motion passed unanimously.

Set Public Hearing- S.
Joe Eidemiller-Zoning
Map Amendment

Mr. McFarland **moved to set public hearing for March 13, 2007 for US. Bank NA, Trustee for Sidney Joe Eidemiller, 610 W. Kessler-Cowlesville Rd, Pt IL 2392, ±75.565 acres for Zoning Map Amendment from I-1/POI to PC and PR**. Mr. Berbach seconded the motion and the motion passed unanimously.

Set Public Hearing-
Tipp City Church of the
Nazarene- Zoning Map
Amendment

Mr. McFarland **moved to set a public hearing for March 13, 2007 for the Tipp City Church of the Nazarene, 1221 W. Main St., IL 2136, ±8.665 acres for a Zoning Map Amendment from OS to HS.** Mr. Berbach seconded the motion and the motion passed unanimously.

Site Plan Review-City
of Tipp City, Veterans
Memorial Park, 450 W.
Main Street

Mr. Vath said the City was seeking approval of the site plan for the Veterans Memorial Park at 450 W. Main Street, SE corner of Main Street and S. Hyatt Street. The proposed park is approximately 10, 030 sq. ft. in area. It would incorporate several architectural and landscaping features including a gazebo, decorative brick wall, ornamental brick memorial pavers, a memorial obelisk, drinking fountain, 3 flagpoles, grass and other various vegetative landscape elements. The primary structure is a gazebo to be located at the southeastern portion of the park. The 12' obelisk will be located towards the northwestern corner of the park. There are several sections of decorative brick walkways. The walls are ±187 lineal feet, 12" to 28" in height. Four light poles for evening illumination are planned. The Board approved a small off-street parking area on the south end in April 2006. Three parking spaces and some sidewalk are existing.

Mr. Vath continued that City Engineer Vagedes has indicated that storm water detention is not required due to the fact that the proposed use as a park will incorporate less impervious area than the previous use, which was a used car lot. Staff recommends approval of the site plan for the Veterans Memorial Park. A color rendering was included in the Board's packets.

Mr. Berbach asked what the timeline was. Mr. Vath said he was unable to answer that question. Mr. Vagedes was not present but the City does wish to move forward this year. A significant amount of funds has been raised by the community and there is a desire to move forward. The gazebo needs to be built first to set the grade.

Mr. McFarland asked that the lumens be checked for the parking lot. Mr. Vath said the two lumens requirement usually refers to a larger parking lots but he thought this had been looked at by our lighting contractor. Mr. McFarland said there did not appear to be any lighting for the parking area. Mr. Vath thought there was one at the corner of the alley. He suggested that issued could be part of the motion. Some lights could be added if necessary.

Mr. Berbach said he was thrilled with the plan. Mr. Berbach **moved to accept the site plan for Veterans Memorial Park, 450 W. Main St. and that the photometrics be checked for 2 lumens per parking space.** Mr. McFarland seconded the motion. Motion carried unanimously.

Old Business

There was no Old Business to discuss.

Miscellaneous

City Council Reports:
January 16, 2007

Mr. Berbach was not present at the January 16th meeting. Mr. McFarland said he did attend. It was reported that the zoning map amendment for Captor Corporation from I-1 Interim to permanent I-1 was approved. The zoning map amendments for the Don Wright property was approved from R-3 to HS and from OS to HS was approved by City Council.

February 5, 2007

Mr. McFarland reported for Mr. Springer. At the February 5, 2007 meeting Council approved the code amendment for Planning Board regarding the responsibilities and duties of the Board, (Ord. 04-07); the ordinance for special uses for building materials sales yards (Ord. 05-07). Ordinance 07-07 directed the Law Director to file the annexation petition for 23.203 acres owned by the City, land that was donated by Meijer. There was a first reading for the fence code revisions, second reading for February 20. Mr. McFarland complimented the Board for their work on the code.

Board member
comments

Mr. Blake said the decision on the lot split was difficult and it was difficult to place the burden of the costs on the applicant. He felt the Board really needed to follow code and the Thoroughfare Plan. If Council wishes to make any changes in the code that is their duty.

Mr. McFarland said he wished to thank whomever for the Board Directory as it will be most useful. Mr. Vath said that was the Clerk of Council. Mr. McFarland also thanked all that attended due to the weather conditions cancelling the last meeting.

Adjournment

There being no further business for discussion, Mr. McFarland **moved that the meeting be adjourned.** Mr. Berbach seconded the motion. The motion unanimously carried. Chairman McFarland declared the meeting adjourned at 8:29 p.m.

Michael McFarland, Planning Board Chairman

Attest: _____
Marilyn Fennell, Board Secretary